

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 5TH DAY OF JUNE 1998

BEFORE:

THE HON'BLE MR.JUSTICE M. F. SALDANHA

WELT PETITION NO. 11245 / 1996

BETWEEN:

1. Smt. Seenabai W/o.
Bheemnath, Age:
81 years, Occ: Agriculture,
R/o Talawada (M), Tq: Bhalki,
Dist: Bidar.
2. Smt. Gangabai, W/o Gorakhnath
Age: 76 years, Occ: Agril.,
R/o Talawada (M), Tq: Bhalki,
Dist: Bidar.

... PETITIONERS

(By Sri I.G.Gachchinamath, Advocate.,)

AND:

1. The State of Karnataka
by its Secretary to the
Revenue Department,
M.S.Building, Vidhana Veedhi,
Bangalore-1.
2. The Land Tribunal Bhalki
by its Chairman The
Assistant Commissioner,
Tq: Bhalki, Dist: Bidar.
3. The Tahsildar Bhalki
Taluk, Dist: Bidar.
4. The Village Accountant
Talawad (M) Tq: Bhalki,
Dist: Bidar.

Sri. Vittal Rao @ Vittal
S/o Devarao since deceased
by his L.Rs:

5a.



208

5a. Smt. Champabai W/o Rao Saheb
Biradar, Age: Major, Occ:
Household R/o Village Talawad-M
Tq: Bhalki, Dist: Bidar.

5b. Sri. Ashok S/o Rao Saheb
Biradar, Major, Occ:
Agriculture Servant, R/o.
Village Talawada (M), Taluk:
Bhalki, Dist: Bidar.

5c. Sri. Vinayak S/o Rao Saheb
Biradar, Age: Major, Occ:
Nil, R/o Village Talawad (M)
Tq: Bhalki, Dist.
Bidar.

5d. Sri. Balaji S/o Rao Saheb
Biradar, Age: Major,
Occ: Private Servant,
R/o Village Talawad (M),
Tq: Bhalki,
Dist: Bidar.

5e. Sri. Uttam Bai W/o Digamber
Biradar, Age: Major, Occ:
Household, R/o Village
Talawad (M), Tq: Bhalki,
Dist: Bidar.

5f. Sri. Ishwar S/o Vithoba
Biradar, Age: Major, Occ:
Private Servant,
R/o Talawad (M),
Tq: Bhalki,
Dist: Bidar.

... RESPONDENTS



(By Sri S.V.Jagannath, Addl. Govt. Advocate, for
R1 to R4.,)

(By Sri. Manikappa Patil, for R5(a) to (f).,)

 Writ

Writ Petition filed under Articles 226 and 227 of the Constitution of India, praying to direct R-2 to supply the certified copy of the Land Tribunal Order Form No.7, statement of the parties, notices issued to the parties and direct the R-1 to 4 to delete the name of the State Govt. and the respondent No.5(a) to (f) from the Records of Rights in respect of Sy. No.153/1 assessed at Rs.25-29 p. situated at Talawada (M) Village, Bhalki Taluk, Bidar Dist.

This Petition coming on for preliminary hearing 'B' group this day, the Court made the following:-



O R D E R

[Signature]

200

O R D E R

I have heard all the three learned Advocates. This is an unusual case where the petitioners' learned Advocate points out to me that the original R-5 is supposed to have obtained an order dated 31-3-81 from the Tribunal in his favour. The petitioners are old ladies and they contest the correctness of that order but their learned Advocate points out to me that they ^{are} coming to know of the order in question, an application was made to the Tribunal in the year 1996 and that on the same day an endorsement was issued that the file is not available and that therefore the copies of the documents asked for, one of which is the impugned order, cannot be furnished. Learned Advocate submitted that his clients are placed in a very incongruous position in so far as the order is sought to be used against them where as they do not have an opportunity of challenging that order. He has made ^a two-fold prayer the first being that the authorities be ordered to furnish certified copies of the documents in question and secondly that since the petitioners challenge the correctness of the so called order, that the mutation entries that have proceeded on the basis of that order be revoked. Mr. Patil who represents R-5 and his legal

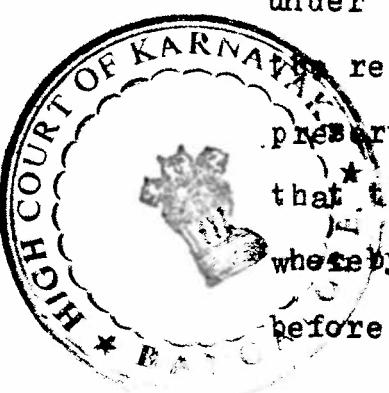


heirs

S

heirs has seriously objected to the second prayer. He states that the proceeding is several years old, that R-5 has passed away and that his clients are villagers who have ~~not~~ been able to trace out only a few copies of some documents but that they are unable to lay their hands on a copy of the order. However, he has produced before me documents that indicate payment of the occupancy price and his contention is that this stage should only have come up after the original order was passed and he also relies on the registration certificate.

2. The learned Govt. Advocate points out to me that there were thousands of cases that came up under the Land Reforms Act and that even though records ought to be properly maintained and preserved, that if the Authority has pointed out that the file is not traceable/there is no means whereby he is in a position to produce the records before the Court.



3. There is considerable substance in the petitioners grievance, that they cannot be prejudiced on the basis of ~~orderxxxif~~ those orders ~~of~~ for that matter the entire file is not traceable. To my mind, the correct procedure would be to direct the R-2 and R-3

2 to

2/2

to carefully search out ^{and} trace the original file. There is no valid reason why the file should disappear and even if it has been misplaced, it can always be located. This procedure shall be completed within an outer limit of 3 months from today and the copies of the documents as are mentioned in the impugned endorsement shall be furnished to the petitioners or their learned Advocate. The petitioners' learned Advocate shall however follow up the matter with R-2 and 3 and if the documents are available, the same shall be collected.

4. As indicated earlier, there is no reason why the file in question cannot be located and the R-2 and 3 are warned that if any false explanations are put up to this Court that the consequences will be serious. The petitioners' learned Advocate however submits that in the unlikely event of the documents not being available that the legal remedies be kept open to the petitioners for taking necessary steps as they may be advised to do so in that event. This request is justified and it shall be open to the petitioners to adopt any such proceedings as the law entitles them to



2 protect

protect their own rights, It would not be proper in the light of the aforesaid situation at this stage for this Court to pass any order with regard to the mutation entries as per the latter part of the prayer clause. That aspect of the matter is however kept open and the petitioners shall be allowed to agitate that issue as and when the same becomes necessary.

5. These are the only directions that are necessary at this stage. The petition succeeds to this extent. No order as to costs.

Office to furnish copies of this order to the learned Advocates, forthwith.

Sd/-
JUDGE

MSU/* 080698

